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OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California	R.20-09-001 (filed July 2, 2021)

OPENING COMMENTS OF AT&T CALIFORNIA (U 1001 C) ON THE FIRST AMENDED SCOPING MEMO AND RULING

Isabelle Salgado
Nelsonya Causby
AT&T Services, Inc.
430 Bush Street
San Francisco, California 94108
Tel: 415.268.9493
E-mail: lc6239@att.com

Counsel for AT&T Services, Inc.

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TABLE OF CONTENTS

AT&T California ("AT&T") respectfully submits its opening comments regarding the Assigned Administrative Law Judge's Ruling ("Ruling") issued on May 28, 2021, in this proceeding.[1] As part of this larger rulemaking, the Ruling seeks comment on a sub-inquiry into whether the Commission should open an investigation into "whether Internet service providers (ISPs) are refusing to serve communities or neighborhoods within their service or franchise areas, a practice commonly called redlining."[2] It should not. AT&T does not engage in redlining. The Ruling's use of the highly-charged term "redlining" – which has historically implied intentional discrimination – is not relevant to, and creates an unnecessary distraction from, the task at hand, which is to ensure all Californians have access to broadband services.

As shown below, publicly available data overwhelmingly refute any claim of "redlining" in the deployment of broadband networks in California, and none of the papers or data on which the Commission seeks comment support such allegations. Thus, an investigation is not warranted. Accordingly, AT&T urges the Commission to keep the focus of this rulemaking on seeking solutions to close the digital divide, and provides constructive recommendations for consideration to direct the Commission's and parties' limited resources to expand the availability, affordability, and adoption of broadband services.

[1] *See Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California*, R.20-09-001, Assigned Administrative Law Judge's Ruling (May 28, 2021) ("Ruling").

[2] Ruling at 1.

INTRODUCTION

The Commission opened this docket in September 2020 to identify effective and appropriate strategies to close the digital divide in California by delivering faster and more affordable broadband.[3] AT&T strongly supports that goal. Indeed, AT&T continues to invest billions of dollars in fast, reliable, and high-quality wireless and wireline networks, covering virtually every person in California. As discussed below, AT&T is eager to work with the Commission, Governor Newsom, and all California stakeholders on finding ways to develop and deploy additional resources and to advance private and public partnerships to ensure more Californians have quality and affordable internet services.

As part of this sub-inquiry, the Ruling seeks comment on three papers that allege or imply "redlining," and it also asks whether a dataset collected by the Commission indicates the existence of such conduct. The short answer is an emphatic "no." AT&T has deployed high quality wireless and wireline broadband networks that together are available to virtually all Californians on an equitable basis. AT&T has also developed voluntary low-cost offerings and participates in federal and state programs designed specifically to facilitate adoption of broadband services by low-income households. Even focusing solely on AT&T's fiber-based network, publicly available data set forth below confirm that AT&T has deployed fiber to low-income and Census-designated non-white households at the same rate as other households. For example, public data show that AT&T's fiber network covers about 25% of households above the poverty line and about 25% of households below the poverty line. Similarly, its fiber network covers about 25% of Census-designated "White" households and about 25% of census-

[3] *See Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California*, R.20-09-001, Order Instituting Rulemaking (Sept. 18, 2020).

designated "Non-White" households. Thus, none of these demographics is over- or under-represented in AT&T's fiber footprint.

The papers on which the Commission seeks comment do not refute the conclusions inferred from AT&T's analysis of the data. These self-published, non-peer-reviewed papers rely mainly on flawed anecdotal evidence that ignores most broadband deployment in California, including all wireless broadband networks. Moreover, to the extent they do purport to rely on systematic data and analysis, the data are outdated. As just one example, the demographic distribution used by one of the papers is from the 1930s, notwithstanding substantial changes in the ensuing nine decades.

As to the Commission's dataset, it merely confirms what is well known: fiber deployments are concentrated in areas with higher household density. Household density, not median incomes, drives these deployments. Indeed, the Commission's data show full fiber coverage in the ten lowest median-income areas in California, which also happen to have high household density.

In short, none of these sources provide any legitimate evidentiary basis for an investigation of whether ISPs have engaged in discriminatory practices in the deployment of their networks. Nor do these papers establish a reasonable basis for an investigation or to conclude that AT&T has refused to serve Californians on the basis of race or income. AT&T does not discriminate in the deployment or offering of internet access, period. Any contrary suggestion is patently false and contrary to the facts. Rather, AT&T is committed to addressing the digital divide in California and is dedicated to doing its part to close the gap. To this end,

AT&T has committed to invest $2 billion in California and throughout its footprint to help address the digital divide. [4]

To be sure, while competitive broadband services – both wireline and wireless – are deployed extensively throughout the state, the digital divide in California is real. AT&T is eager to play its part to address this national challenge,[5] which requires extraordinary effort from all stakeholders to resolve these complex issues. The challenge will not be resolved through investigations of historical deployment decisions, but rather through a focused collaboration amongst all stakeholders to address the digital divide.

The general consensus is that connecting all Americans to an optimal level of broadband service requires surmounting myriad challenges, including affordability, adoption, and availability. In some cases, the challenge is access. Some Californians lack access to sufficient broadband service, typically due to the high cost of building to areas with topographical challenges or low population density. In other cases, the challenge is affordability and/or adoption. Providers have deployed broadband, but consumers have not subscribed to the service either for affordability-related reasons or because of a lack of digital literacy. Each of these issues – availability, affordability, and adoption – raise challenges that require thoughtful consideration based on identification and prioritization of the underlying causes, the feasibility of options to mitigate those causes, and clear attainable goals that anticipate future trends and developments. The solutions to these problems will likely require, at least in part, new public subsidy programs.

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[4] *See, e.g., AT&T Makes $2 Billion, 3-Year Commitment to Help Bridge the Digital Divide*, April 14, 2021, https://about.att.com/story/2021/digital_divide.html ("*AT&T 2021 Article*").

[5] *Id.*

There is exciting momentum at both the federal and state level for infrastructure funding programs that could make a dramatic and lasting impact on these issues. In conjunction with those efforts, the FCC has established a Broadband Data Task Force that is preparing location-specific mapping to include an unprecedented level of precision in targeting funding to housing units that currently lack adequate broadband service.[6] Once completed, that map should be the definitive resource for federal and state agencies in addressing the digital divide.[7] Indeed, the FCC is poised in the coming months, likely in the first or second quarter of 2022, to produce a data source that is vastly superior to and more comprehensive than any of the studies on which the Commission is seeking comment here. The FCC map will provide the Commission with accurate and reliable granular data that are necessary to identify gaps in availability and develop appropriate policies regarding efficient deployment of broadband services.[8]

Recognizing the urgency of connecting all customers to an acceptable level of broadband services, AT&T recommends that the Commission convene a collaborative workshop process with all stakeholders to identify and prioritize problem-specific, viable measures to close gaps in the digital divide. AT&T outlined six specific suggestions for approaching the digital divide in its June 15, 2021 letter to the Governor and leaders of the state legislature. Those six suggestions include:

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[6] *See* FCC, "Broadband Data Collection," https://www.fcc.gov/BroadbandData (last visited June 25, 2021).

[7] AT&T Public Policy Blog, "Broadband Availability: Sizing the Scope of the Challenge," Apr. 8, 2021, attpublicpolicy.com/universal-service/broadband-availability-sizing-the-scope-of-the-challenge.

[8] Notably, the broadband services at issue are interstate information services, not common carrier services. *See Mozilla Corp. v. FCC*, 940 F.3d 3 (D.C. Cir. 2019). In contrast to statutory funding programs intended to facilitate investments to close the digital divide, the Ruling does not cite any source of jurisdiction or other authority that would permit the Commission to directly regulate where broadband providers deploy facilities.

- Safeguards for hundreds of thousands of unserved California households that, among other things, prioritize funding to support private sector retail broadband service deployment that is focused on unserved areas, including the most difficult to reach households;

- Consultation with network operators to develop successful operating guidelines, including, among other things, issues related to investment in middle mile facilities, guidance on local permitting to facilitate deployment, and using union labor for broadband deployment;

- Immediate relief for low-income consumers with access to broadband but who cannot afford it;

- A funding mechanism to support last-mile, middle-mile, and broadband adoption programs;

- A sustainable and equitable subsidy for high-cost areas; and

- Public-private partnerships to enable immediate broadband deployment.

These recommendations, which are consistent with AT&T's prior comments in this docket,[9] should be considered at a workshop and explored in an expeditious manner. Californians are better served by actions that will rapidly improve access to broadband service than by a protracted investigation into historic deployment decisions. The resources of the state and the parties can be better utilized to produce positive results. AT&T is committed to working with all stakeholders towards closing the digital divide with sound polices and rapid action.

[9] Opening Comments of AT&T California (U 1001 C) On The Order Instituting Rulemaking, *Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California*, R.20-09-001, at 8-9, 14 (Oct. 12, 2020); Reply Comments of AT&T California (U 1001 C) On The Order Instituting Rulemaking, *Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California*, R.20-09-001, at 2-3, 9 (Oct. 27, 2020).

ARGUMENT

I. AT&T DEPLOYS BROADBAND IN AN INCOME- AND RACE-NEUTRAL MANNER THAT HAS RESULTED IN DEPLOYMENTS THAT COVER CALIFORNIANS OF DIFFERING INCOMES AND RACES EQUALLY.

Publicly available data confirm that there is no evidentiary basis whatsoever to support allegations that AT&T's actions somehow reflect discrimination in the deployment or provisioning of internet service. A proper assessment of broadband deployment should account for all technologies, both wireless and wireline. In this regard, AT&T's broadband offerings cover virtually all Californians. AT&T's wireless broadband network currently covers more than 99 percent of Americans.[10] Wireless broadband service is a viable alternative that millions of people rely upon for access to the Internet. AT&T's network is very fast and high-quality: according to third-party analysis for California, AT&T's wireless broadband delivers median download speeds of over 46 Mbps, faster than any other wireless carrier and vastly in excess of the FCC's definition of broadband as 25 Mbps download speeds.[11] Moreover, AT&T continues to invest heavily in upgrading its wireless network across California, and its speeds will thus continue to increase. AT&T also offers numerous unlimited plans with significant Wi-Fi hotspot allocations at prices similar to those of many fiber-based connections, making these plans a legitimate alternative to fiber-based services for many end users.

AT&T has also made massive investments to deploy and upgrade its wireline broadband networks across California. In recent years, AT&T has invested billions of dollars to deploy

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[10] *See* 2020 Communications Marketplace Report, Communications Marketplace Report, FCC 20-188, GN Docket No. 20-60, ¶ 72, Figure II.A.33 (Dec. 31, 2020) https://docs.fcc.gov/public/attachments/FCC-20-188A1.pdf.

[11] *See* Ookla (Speedtest.net) website, *United States' Mobile and Fixed Broadband Internet Speeds, Ranking Mobile and Fixed Broadband Speeds from Around the World on a Monthly Basis*, https://www.speedtest.net/global-index/united-states (last visited June 25, 2021).

fiber broadband services that offer speeds well in excess of 100 Mbps in census blocks covering more than 2.5 million households in California. AT&T recently announced that it plans to extend fiber to another 3 million customer locations in 2021, including in several California cities.[12] Moreover, AT&T maintains non-fiber fixed broadband deployments in its wireline service area, covering millions of additional households.

AT&T also participates in federal and state programs designed to extend broadband service to more people. For example, as of year-end 2020 under the FCC's CAF II program, AT&T California completed deployment of broadband to over 145,000 locations, which exceeded the FCC's established goal of 141,500 locations.[13] The majority of locations are offered AT&T's Fixed Wireless Internet ("FWI") service, with the remainder offered wireline technologies. While the FCC's CAF II program requires minimum speeds of 10/1, AT&T's FWI customers typically experience download speeds of 25 Mbps.

AT&T offers all of these broadband services to everyone where they are available on an equal basis, and AT&T has developed lower cost options designed specifically to facilitate adoption by lower income households. Most recently, AT&T announced that it would make an additional $2 billion, 3-year investment to bridge the digital divide, including by "[e]xpanding affordable broadband through . . . low-cost offers and the Emergency Broadband Benefits program administered by the FCC."[14]

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[12] "AT&T Provides Update on Strategy, Financial Outlook," Mar. 12, 2021, https://about.att.com/story/2021/att_analyst_day.html.

[13] AT&T's CAF II deployment data is available at the Connect America Fund Broadband Map webpage, https://data.usac.org/publicreports/caf-map.

[14] *See AT&T 2021 Article.*

In California, AT&T has made significant contributions to help bridge the digital divide and stepped up to keep Californians connected during the COVID-19 pandemic. AT&T joined the Keep Americans Connected Pledge not to terminate the service of its customers due to an inability to pay their bill because of the pandemic. AT&T and the AT&T Foundation made contributions in California totaling over $3.5 million to support online education and distance learning during the COVID-19 pandemic. For example, AT&T provided more than 20,000 devices and hot spots to school districts throughout California to bridge the homework gap as schools shifted their operations to remote learning. AT&T recently announced it is partnering with the SoLa Foundation to provide free internet to 1,000 South Los Angeles families for 1,000 days. Additionally, this year, the AT&T Foundation is giving $425,000 to 14 organizations across California to close the digital divide and the homework gap, particularly in at-risk communities. These are just some of AT&T's efforts to help make broadband connectivity more accessible, affordable, and sustainable. AT&T's commitment to connecting communities, working to close the homework gap, and addressing both economic and digital divides is real and longstanding.

In short, there is no basis whatsoever for any claim that AT&T's deployments are somehow discriminatory on the basis of income or race. Those alleging otherwise focus solely on AT&T's fiber network, and thus erroneously ignore AT&T's wireless networks, all other AT&T non-fiber wireline deployments for broadband service, and all of AT&T's other activities to help close the digital divide.

Ignoring these other facts – especially wireless broadband deployments – is inconsistent with reality and contrary to the experience of consumers. Wireless broadband is an important element of any reasonable plan to achieve universal broadband coverage, especially to rural areas

where the cost of deploying fiber or other terrestrial networks can be prohibitive. Today's high-speed broadband wireless mobile networks offer the same core functionalities as wireline broadband services and are crucial to bringing broadband service particularly to remote and difficult to serve areas. Consumers can buy unlimited plans that are comparable to wireline services; they can also use wireless services as a hot spot that substitutes for a wireline connection to any device. For these reasons, many Americans have already chosen to switch entirely to mobile wireless broadband,[15] including the vast majority of customers who purchase services under the federal Lifeline program.[16]

Most people can use a wireless connection in the same manner that they would use a wireline connection, whether using a wireless device or using a hot-spot, and that is becoming truer over time as wireless technologies continue to advance. For these reasons, wireless services may be the better solution for bringing high-quality broadband to many hard-to-serve rural areas, rather than expensive fiber-to-the-home buildouts. Additionally, because of the price, range of functionality and portability of wireless devices, wireless service may be a preferred option for those with limited disposable income.

Even if wireless service is put aside and the focus is solely on fiber deployment for broadband access, publicly available data refute any claims that the deployment of fiber-based broadband has been discriminatory on the basis of race or income. The data demonstrate that AT&T's fiber deployment within its wireline footprint does not disproportionately under-

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[15] *See* Thirteenth Section 706 Report Notice of Inquiry, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, ¶ 9 (FCC rel. Aug. 8, 2017).

[16] Universal Serv. Admin. Co., *2016 Annual Report*, at 14, https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2016/2016-Annual-Report.pdf (90% of Lifeline subscribers are mobile).

represent particular demographic groups. The table below uses publicly available data from the FCC and the Census Bureau to identify the percentage of households in census blocks where AT&T has deployed fiber since 2016, separately for: (1) all households with fiber; (2) households identified as below the poverty line by the Census Bureau; (3) households identified as above the poverty line by the Census Bureau; (4) households designated as "White" by the Census Bureau; and (5) households designated as "Non-White" by the Census Bureau.[17]

If AT&T's fiber deployments avoided low-income or minority households, one would expect the data to show that AT&T's fiber service is deployed to a relatively smaller fraction of low-income and non-White households within its wireline service area. But that is not what the data show. As shown in Table 1 and the accompanying chart, AT&T has been deploying fiber to higher- and low-income households in similar proportions, and AT&T has deployed fiber to Census-designated White and non-White households in similar proportions. Moreover, these proportional deployments have been consistent over time.

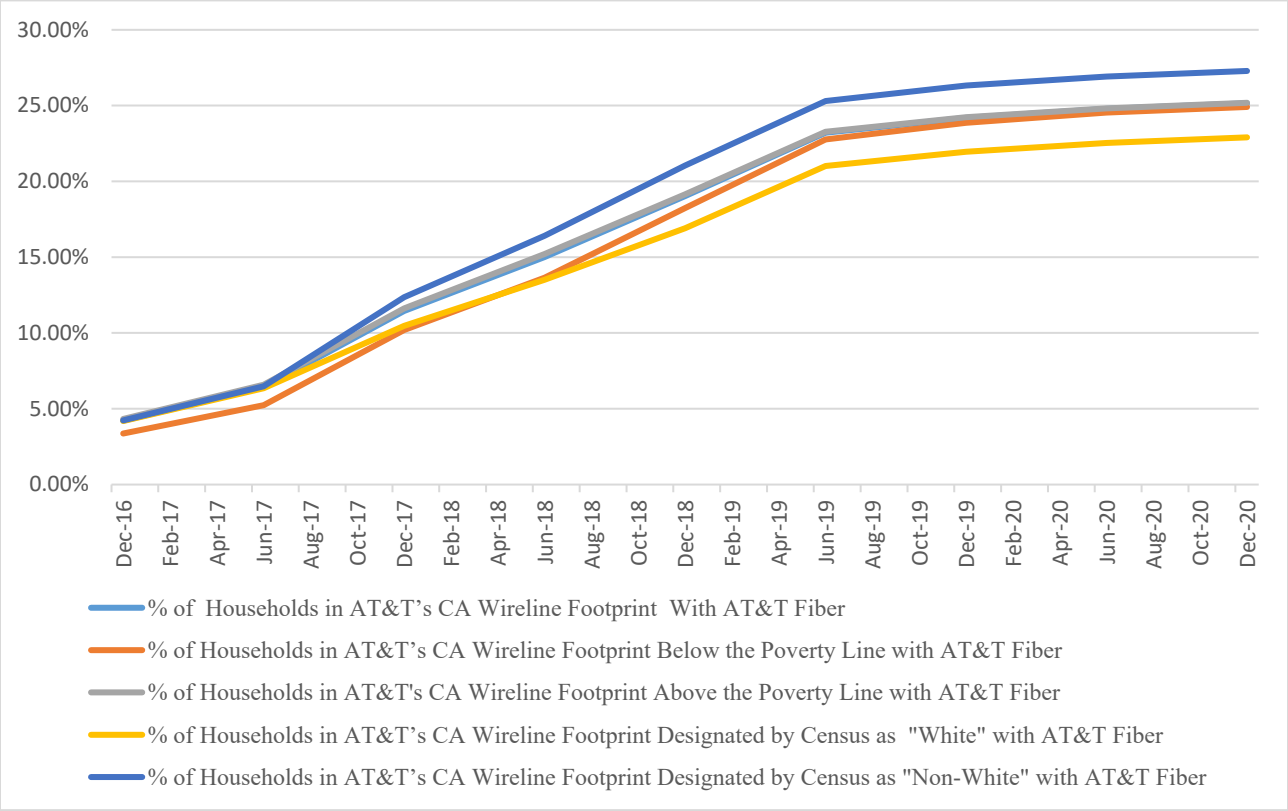
[17] The "White" category used for this analysis is the Census Bureau category designated as "White alone, not Hispanic or Latino," which the Census Bureau defines as "individuals who responded 'No, not Spanish/Hispanic/Latino' and who reported 'White' as their only entry in the race question." *See* Census Bureau Website, https://www.census.gov/quickfacts/fact/note/US/RHI825219. The "non-White" category is the remaining households.

Table 1. AT&T Fiber Deployments Since 2016[18]

Filing Period	% of Households in AT&T's CA Wireline Footprint With AT&T Fiber	% of Households in AT&T's CA Wireline Footprint Below the Poverty Line with AT&T Fiber	% of Households in AT&T's CA Wireline Footprint Above the Poverty Line with AT&T Fiber	% of Households in AT&T's CA Wireline Footprint Designated by Census as "White" with AT&T Fiber	% of Households in AT&T's CA Wireline Footprint Designated by Census as "Non-White" with AT&T Fiber
Dec-16	4.21%	3.37%	4.33%	4.19%	4.23%
Dec-17	11.45%	10.20%	11.62%	10.47%	12.36%
Dec-18	19.03%	18.24%	19.14%	16.91%	21.04%
Dec-19	24.19%	23.86%	24.23%	21.95%	26.32%
Dec-20	25.15%	24.91%	25.19%	22.91%	27.28%
% Change 2016-2020	496.86%	638.97%	481.40%	446.39%	544.61%

[18] The census blocks where AT&T has deployed fiber are publicly available from AT&T's semi-annual FCC Form 477 submissions for the periods December 2019 and earlier (AT&T's December 2020 submission has not yet been posted by the FCC). *See Fixed Broadband Deployment data from FCC Form 477*, https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477 (last visited June 25, 2021). The percentages in the table use the number of households in each census block as of 2019 as maintained by the FCC. *See id.* The number of households in those census blocks below the poverty line are from the American Community Survey (ACS) 2015-2019 5-year data set, Tables 17017_1 and 17107_2. The "White" and "Non-White" categories are also from ACS, Tables B11001 and B11001H. These demographic datasets are available from the Census Bureau's website and contain data at the census block group level, which was applied proportionally to each census block within each group to compute the percentages shown in Table 1. *See* Census Reporter, https://censusreporter.org/search (last visited June 25, 2021).

Chart 1. AT&T Fiber Deployments Since 2016



Another way to examine the data is to consider whether the proportions of lower-income and non-White households in AT&T's fiber footprint are lower than those within AT&T's overall wireline footprint. If AT&T's fiber deployments actually avoided low-income or minority households, one would expect those categories to be underrepresented in AT&T's fiber footprint compared to the incidence of those categories in AT&T's overall wireline service area. As the table below shows, the actual data show the opposite. AT&T's fiber footprint has about

the same percentage of below poverty level, non-white, and white households as exist overall in its wireline footprint.[19]

Table 2. Demographics Coverage in AT&T's Wireline Footprint vs. Fiber Deployment Area

	% Below Poverty Line	% Non-White HHs	% White HHs
AT&T Fiber Footprint	12%	56%	44%
AT&T Wireline Footprint	12%	51%	49%

In short, the evidence is clear that AT&T does not engage in discrimination in deployment or access of internet services.

II. THE STUDIES AND DATA SUBMITTED FOR COMMENT CONTAIN NO VALID EVIDENCE OF DISCRIMINATION.

The Commission asks for comment on three papers and one dataset, and seeks comment as to whether they demonstrate that "Internet service providers (ISPs) are refusing to serve certain communities or neighborhoods within their service or franchise areas."[20] The answer is no.

A. None Of The Papers Establish Inequitable Deployment By AT&T

As demonstrated above, AT&T's broadband deployments are similar across income, race, and ethnicity. Nonetheless, some of these papers lump AT&T in with all ISPs in California

[19] These figures use the same data described in n.18, *supra*. Data as of December 2020. The percentage of households in each demographic within AT&T's overall wireline footprint is equal to the number of households in census blocks within AT&T's wireline footprint for each demographic category divided by the total number households within AT&T's wireline footprint for each demographic category. The percentage of households in each demographic category within AT&T's fiber footprint is equal to the number of households in census blocks within AT&T's fiber footprint for each demographic category divided by the total number households within AT&T's fiber footprint for each demographic category.

[20] Ruling at 1.

and purport to show that California ISPs are engaged in various forms of discrimination in connection with their broadband deployments. As a preliminary matter, it is important to recognize these papers all share two characteristics that make them of zero evidentiary value to the Commission. First, none of them includes the data or underlying analysis on which their conclusions are based.[21] Second, the papers are self-published and not peer reviewed, which further undermines their evidentiary value. Additionally, each of the three papers is flawed in a number of other respects.

Greenlining Report. AT&T agrees with Greenlining Institute's ("GI") commitment to "building a just economy that is inclusive, cooperative, sustainable, participatory, fair and healthy,"[22] but GI's report provides no evidence that broadband deployment is subject to "redlining."[23] To the contrary, GI's report is not a scientific, peer-reviewed examination of whether redlining is occurring, but rather a self-published "mini-report" that relies mostly on anecdotes and selective misinterpretations of isolated data points from third-party studies.

To begin with, while GI relies heavily on a 2019 California Emerging Technology Fund ("CETF") poll,[24] it misstates the results of the poll. CETF asked respondents what type of device

[21] The Commission has itself previously argued that it would be "fundamentally unfair" for an agency to rely on a study where the underlying data was not available to other parties for review and that in such cases the agency "should place no confidence" in the study. *See* Motion By California To Strike Ex Parte Filings Made By Airtouch, *Petition of California and the CPUC to Retain Regulatory Authority Over Intrastate Cellular Service Rates*, FCC PR Docket No. 94-105, at 4 (Mar. 16, 1995) ("*CPUC Cellular Motion*").

[22] *See* Greenlining, Our Vision & History, https://greenlining.org/about/our-vision-history.

[23] Greenlining Institute, *On the Wrong Side of the Digital Divide* (June 2, 2020) ("Greenlining Report"), https://greenlining.org/publications/online-resources/2020/on-the-wrong-side-of-the-digital-divide.

[24] California Emerging Technology Fund, 2019 Berkeley IGS Poll, https://www.cetfund.org/wp-content/uploads/2019/08/005_003_002_CETF_2019_002_IGS_Poll_CA_Digital_Divide_ppt.pdf (last visited June 25, 2021).

they use to connect to the internet at home ("computing device" or "smartphone only").[25] One of the poll's many findings was that 68 percent of Latino respondents used a computer compared to 89 percent of White respondents.[26] GI claims that this shows that "Latino households are 21% less likely to have access to home internet than White ones."[27] But that is not what the poll says. The CETF poll did not ask about broadband access; it asked about adoption. The poll says nothing about the availability of any type of broadband (wireless or wireline) to any respondent.[28]

In addition, CETF's 2019 poll was taken prior to the pandemic and is already out of date. CETF's new poll, taken in early 2021, shows continued improvement in subscriptions and substantial declines in "smartphone only" users.[29] Indeed, the 2021 poll shows that White, Black, Asian-American, and English-speaking Hispanic respondents all use a computer for home

[25] CETF 2019 IGS Poll at 6 (Table 4a). "Computing device" includes a "home desktop, laptop, or tablet." *Id*. at 5 (Table 3).

[26] CETF 2019 IGS Poll at 6 (Table 4a). More generally, the poll found that the vast majority of both Latino respondents (86%) and White respondents (94%) connect to the internet at home; Latino respondents were simply more likely to connect using a smartphone only. *Id*. It is unclear how the poll identified the category designated as "Latino" households. As described above, the Census Bureau relies on self-reporting by survey respondents. The CETF 2019 IGS Poll, by contrast, does not identify how it distinguished between Latino and non-Latino households, which raises additional questions about the reliability and interpretation of the results.

[27] Greenlining Report (citing CETF 2019 IGS Poll). Somewhat confusingly, the report also states that "Latino households are only about one third as likely to have access to home internet as White ones," *id*., which contradicts the other statement and has no apparent basis in the CETF 2019 IGS Poll.

[28] Elsewhere, the Greenlining Report acknowledges that the reason Californians are unconnected to the internet is "usually because internet access simply costs too much for some families," citing the CETF 2019 IGS Poll.

[29] California Emerging Technology Fund, 2021 USC IGS Poll, https://www.cetfund.org/wp-content/uploads/2021/03/Annual_Survey_2021_CETF_USC_Final_Summary_Report_CETF_A.pdf (last visited June 25, 2021).

internet connectivity at almost exactly the same rates (around 90%), with English-speaking Hispanics having the highest computer adoption (92%) and the lowest number of unconnected respondents (2%).[30] The outlier is Spanish-speaking Hispanics, 25% of whom are "unconnected" at home.[31] But again, the CETF poll is measuring adoption, and respondents indicated that the principal reasons for not subscribing to a broadband service are affordability, lack of digital literacy, and lack of an appropriate device.[32] CETF's poll results have nothing to do with whether providers are deploying broadband options in a discriminatory manner.

GI's attempt to show redlining in Oakland is even further off the mark. GI's entire showing consists of a visual comparison of two screenshot maps of Oakland. The first purports to be a "heat map of the digital divide" in Oakland as of 2020. The second is said to be a historical map of how banks redlined housing in Oakland in the 1930s. GI argues that these two maps show that "areas that were redlined by banks in the past are digitally redlined today." The maps show no such thing.

First, neither map has any evidentiary value in this proceeding. With respect to the "heat map," GI provides no citation, no underlying data, and no explanation for either the source of the data or how it calculated the various color-coded areas.[33] With respect to the historical map, GI also provides no source or underlying data, but more importantly, it offers no basis to assume that the demographic distribution of households in Oakland in the 2020s is the same as it was in the 1930s. In fact, there have been substantial shifts in the demographic makeup of many communities throughout Oakland during the past 90 years.

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[30] *Id.* at 6 ("Broadband Adoption by Race/Ethnicity").

[31] *Id*.

[32] *Id*. at 20.

[33] *See CPUC Cellular Motion* at 4.

Even if GI could overcome those problems, GI does not conduct any rigorous analysis that compares demographics in census blocks, zip codes, or some other established geographic measure. Instead, GI invites the reader merely to "eyeball" the two maps ("As you can see . . ."). But on a simple eyeball test, the heat map does not line up with the banks' pre-war redlining of housing. There are many areas that are "red" in the 1930s map that show average or higher internet speeds in the 2020 map. Thus, GI's visual comparison fails even on its own terms, and the Commission could never rely on these Oakland maps for any finding in this proceeding. In fact, according to Form 477 data, at least one broadband provider offers fixed service at speeds of 25/3 in 99.98% of census blocks within Oakland, accounting for 100% of households.

AT&T also strongly disagrees with GI's allegation that its *Access from AT&T* service is "inadequate" or "poorly marketed." AT&T's access service is "a low-cost program for home internet offered to limited-income households who participate in the Supplemental Nutrition Assistance Program (SNAP)."[34] It provides Internet speeds up to 25 Mbps (depending on fastest deployed speeds in the service area) and costs only $10/month, or less based on the maximum speed available at the customer's address.[35] Eligible households receive free installation and an in-home Wi-Fi Gateway with no annual contract and no deposit.[36] It is simply not tenable to argue that download speeds of 25 Mbps (or the fastest available speed offered in the area) are "inadequate," let alone discriminatory. Indeed, 25 Mbps is the download speed threshold used by the FCC to identify adequate broadband services in many of its broadband expansion programs.

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[34] *See Access from AT&T: Stay Connected with Affordable Internet*, https://www.att.com/internet/access (last visited June 28, 2021).

[35] *Id.*

[36] *Id.*

Since *Access from AT&T* was first developed in 2016, AT&T has engaged in over $60 million in extensive marketing and public outreach (including TV, radio, and online advertising) designed specifically to increase awareness of the program. AT&T is marketing *Access from AT&T* by prominently displaying on its customer-facing homepage a link to its webpage, https://www.att.com/access/, that describes the program and encourages prospective participants to obtain more information about and apply for the program. AT&T has also partnered with numerous third parties to raise public awareness of the program and has established a partner portal, accessible from a link on the *Access from AT&T* Website, where participating organizations that are engaged in communications and outreach can access promotional materials, application materials, email and social media templates, and other resources to help share information about the program.

CWA Paper. AT&T is one of the country's largest union employers and is proud of the excellent jobs it brings to communities throughout its service territory. CWA is the largest of those unions, and AT&T supports its employees' CWA membership. CWA's paper,[37] however, is not an independent, peer-reviewed study by impartial researchers. It is an overtly political advocacy piece designed to convince regulators to adopt measures that CWA officials believe would create more work for CWA members, not to focus on the true challenges and solutions to maximizing broadband availability and adoption for U.S. customers.

[37] *See* Communications Workers of America and the National Digital Inclusion Alliance, *"AT&T's Digital Redlining: Leaving Communities Behind for Profit"* (Oct. 2020), https://cwa-union.org/sites/default/files/20201005attdigitalredlining.pdf ("CWA Paper").

The CWA Paper's specific "redlining" claims are false.[38] For example, CWA argues that AT&T prioritizes its fiber buildouts in "wealthier areas" and leaves "lower income communities with outdated technologies."[39] As discussed above, the actual deployment data show this is incorrect. AT&T has built fiber to households below the poverty line at the same rate it has built fiber to all other households.[40] When one also accounts for wireless broadband services, AT&T's network covers virtually everyone in California.

CWA's two sources of support for its claim about AT&T's fiber deployments do not withstand scrutiny. First, CWA asserts that "across the country" the median household income in areas with only DSL services is 34% lower than in areas with fiber available.[41] CWA offers no citation for this proposition or explanation for how it was derived. Furthermore, CWA's focus on broad, nationwide average household incomes is highly misleading. As discussed in more detail below (*see infra*, pp. 23-25), high-cost areas with low household density tend to correlate with lower median household incomes. The disparity CWA identifies, therefore, even if true, likely reflects the fact that the DSL-only areas would be relatively costly to serve with fiber; CWA's statistic by itself does not show income-related discrimination.[42] Second, CWA's claim that a Commission report found that AT&T favors higher-income communities in

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[38] Large parts of the CWA Paper are irrelevant here. Much of the CWA Paper argues merely that AT&T should build fiber to more homes, which does not depend on a claim that AT&T is engaged in discrimination or "redlining." In addition, many of CWA's claims provide no evidence focused on California; they are either broad claims about AT&T's 21-state territory or narrow claims relating to specific situations in other states, such as Oklahoma or Ohio.

[39] CWA Paper at 4.

[40] *See supra*, p. 12.

[41] CWA Paper at 4.

[42] In addition, CWA's nationwide statistic, even if it were true, does not refute AT&T's specific showing here, based on Form 477 data, that AT&T has consistently built fiber to households below the poverty line in California at the same rate as all other households.

deploying broadband misquotes that report.[43] In fact, that report was not about broadband at all; it was about local telephone service.[44]

CWA's Central Valley "case study" is also misleading.[45] CWA claims that AT&T has deployed fiber to less than 10 percent of the households in three agricultural counties: Kings, Tulare, and Madera. As the Commission's data demonstrate, providers have deployed fiber to 100 percent of the more densely populated areas of Kings and Tulare counties.[46] In any event, the fact that fiber deployment may be less widespread in some of the most rural and least-densely populated counties in California should hardly be surprising or controversial. The cost of extending fiber broadband to households in rural areas is typically quite high, and government subsidies would be necessary to achieve broad fiber-based wireline broadband coverage in such areas. Extending wireline networks to high-cost areas is a classic universal service-type issue; it is not a "redlining" problem as CWA claims.[47]

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[43] *See* CWA Paper at 4 & n.7 (*citing* Commission, "Examination of the Local Telecommunications Networks and Related Policies and Practices of AT&T California and Frontier California, 2010 – 2017 (Network Exam)" at p. 515).

[44] CWA also cites a National Digital Inclusion Alliance ("NDIA") analysis from 2017 for the proposition that AT&T has a "documented history" of unequal deployment to low-income communities. *See* CWA Paper at 5-6. The NDIA analyses dealt with Cleveland, Detroit, Dayton, and Toledo, and thus have no relevance here, but it is important to underscore that NDIA's analysis was fatally flawed. These analyses claimed to find differences in deployments between African-American and other households. The analysis, however, falsely assumed that any area containing 51% non-African-American households comprised only non-African-American households, and thus dramatically understated the extent of broadband deployments at African-American households. These studies also misrepresented AT&T's actual deployments in those areas. In fact, many of the areas that were the focus of those studies have fiber today.

[45] CWA Paper at 5.

[46] These metrics are shown in the Commission Excel Spreadsheet referenced in the Ruling at 4.

[47] Notably, CWA acknowledges that AT&T has made 25/3 broadband available to the vast majority of households in Fresno, the largest urban area in the Central Valley, and it properly concedes that the issue in Fresno is one of affordability (which can include the cost of the computing devices as well) and adoption, not "redlining." CWA Paper at 5.

Finally, CWA claims AT&T refuses to install splitting equipment that would permit broader deployment of fiber-based services in areas where AT&T has installed fiber "backbone."[48] This is nonsense. First, the fibers used to carry AT&T's interoffice backbone are typically different from those used to carry last-mile access. Further, the notion that AT&T could simply install a splitter is overly simplified; far more is required to offer retail broadband service. In addition, there must be equipment in the network, at the customer premise, and in the central office.[49]

USC Annenberg Study. In the USC study,[50] the authors conducted various data analyses that purport to show broadband providers are more likely to invest in infrastructure upgrades in neighborhoods with smaller percentages of low income and Black residents. It also cannot be relied upon by the Commission because of several critical flaws.

To begin with, the study relies on outdated information. It considers patterns of deployment that occurred in 2014 through 2017, when providers were in the early stages of deploying fiber broadband services. For example, the number of households in census blocks where AT&T has deployed fiber has more than doubled since 2017.[51] Indeed, specific areas the USC Study focuses on have changed substantially since the study was done. For example, the

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[48] CWA Paper at 7.

[49] CWA assumes (at nn.1 and 22) a cost of $1,000 per household for fiber deployment, "which should be realistic as an average cost, given the widespread fiber backbone already deployed." But a Commission document from a 2017 workshop puts the average cost per household for CASF grant awards at the time for FTTP projects at $15,650. *See* CPUC, *CASF Workshop on Reform Report* at Table 11 (May 25, 2017), https://www.cpuc.ca.gov/General.aspx?id=9226.

[50] *See* USC Annenberg, *Who Gets Access to Fast Broadband? Evidence from Los Angeles County 2014-17* (Sept. 2019) ("USC Study"), http://arnicusc.org/wp-content/uploads/2019/10/Policy-Brief-4-final.pdf.

[51] Moreover, the study focuses solely on Los Angeles County, and thus fails to capture the deployment patterns throughout the rest of California.

study finds that broadband providers deployed more fiber to affluent Glendale between 2014 and 2017 than to Compton.[52] As of today, however, AT&T has deployed fiber to more households in Compton (22 percent) than it has to Glendale (20 percent), and both neighborhoods are roughly in line with AT&T's deployment rate statewide (25 percent).

The USC study also relies on two selected markets to conclude a general trend in the deployment of broadband across the state. AT&T's analysis relies on publicly available and verifiable data throughout the state, and as set forth above, AT&T does not discriminate in the deployment of fiber based on race or income. Finally, the USC study, like the other two papers, completely ignores ubiquitously available wireless service in the areas it studied. For all these limitations, the USC study fails to establish a reasonable basis for further investigation of alleged discriminatory deployment of broadband based on race or income.

B. The Commission Data Merely Confirm That Fiber Deployment Is More Prevalent In More Densely Populated Areas Where The Economics Of Deployment Are More Favorable.

The Ruling also seeks comment on a Commission dataset that examines the weighted average median household income for categories of Census Defined Places ("CDPs") based on the percentage of households in those CDPs that do not have access to a broadband service of 100 Mbps or greater.[53] According to the analysis, the income categories that have at least 25 percent unserved households each have median household incomes between $53,000 and $59,000, whereas the categories that have 25 percent or fewer unserved households have median

[52] USC Study at 4-5 & Figure 9.

[53] *See* Ruling at 4-5 (Table 1).

household incomes above $78,000.[54] The Ruling asks whether this analysis shows income-based discrimination.[55]

It does not. The more detailed dataset underlying the table, which the Commission provided in an Excel spreadsheet, shows why. For each CDP, the underlying dataset provides both (1) the number of households in the CDP and (2) the square miles in the CDP. Calculating the households per square mile for each CDP, as shown in the last column of Table 2 below, makes clear that household density is the real driver of the Commission's results.

Table 3. Duplicate of Table Prepared by Commission, With HH/Square Mile Added

Census Designated Placed (CDPs) Unserved at 100 Mbps Download				
CDPs that are…	**Number of CDPs**	**Number of Households**	**Average MHI**	**Households Per Square Mile**
75% or More Unserved	360	64,407	$53,221	360
Between 50%-75% Unserved	45	13,121	$53,365	443
Between 25-50% Unserved	51	9,816	$59,544	318
25% or Less Unserved	1,055	244,225	$78,520	1,401
Less Than 10% Unserved	949	217,745	$79,927	1,456
Less Than 5% Unserved	822	156,091	$81,012	1,532
Less Than 1% Unserved	470	28,735	$84,452	1,594

As the chart shows, the CDP categories with more than 25 percent unserved have very low average household densities. The CDP categories with 25 percent or fewer unserved have vastly greater average household densities. Household density is directly related to cost as the fixed costs of the network can be spread across more households. The CDPs with high household densities are less costly to serve and thus have relatively high availability of 100

[54] *Id*.

[55] *Id*. at 5.

Mbps broadband. The CDPs with dramatically lower household densities are much more costly to serve and thus have relatively low deployment of 100 Mbps broadband.

Furthermore, the high household density CDPs are disproportionately urban, and the low household density CDPs are disproportionately rural. Since median household incomes in urban areas tend to be higher than in rural areas, the Commission's analysis is largely capturing the difference between urban and rural incomes. But it is the large difference between household densities that is driving the difference in the percentage of unserved households. The relatively modest disparity in average incomes is not the cause of those differences.

Indeed, the ten CDPs with the lowest weighted average median household incomes in the state – which are all below $35,673 – all have 100 percent coverage. This is because those CDPs have very high household densities, most above 2000 households per square mile. AT&T provides 100 Mbps broadband to eight of those ten CDPs, and Frontier serves the other two CDPs.

III. ANSWERS TO THE COMMISSION'S SPECIFIC QUESTIONS

Question 1. Are the inputs and assumptions of the studies discussed above accurate? How could one improve these studies?

The studies do not provide an accurate depiction of broadband deployment for the reasons explained above. More importantly, these papers do not provide any evidence of discrimination in the deployment of broadband services in California. AT&T's more comprehensive and current household-level data show that AT&T deploys fiber broadband to low-income and non-white households at rates comparable to other households. Further, the FCC's map, which is expected to be released next year, will provide more reliable and up-to-date data on availability of broadband at a location-specific level. AT&T recommends that the Commission rely on the FCC map for its future analysis.

Question 2. Do the findings of these studies provide evidence of a systemic problem in California?

As explained above, these studies do not provide a basis for finding a systemic discriminatory practice based on race or income in California and are not useful for assessing broadband deployment or availability of services in California. The papers also do not justify expending the limited resources of the Commission to investigate whether discriminatory practices based on race or income are occurring in California. The Commission's resources are best directed at addressing the true causes of digital divide.

Question 3. Do these studies indicate discrimination based on race, socioeconomic status or otherwise, and, if yes, what are the societal implications?

As explained above, these studies do not indicate discrimination based on race, socioeconomic status, or otherwise.

Question 4. If the Commission were to undertake an investigation into whether ISPs are not serving certain communities or neighborhoods within their service or franchise areas, a practice generally referred to as redlining, how should the Commission conduct that investigation? What data should the Commission rely on for its investigation?

As explained above, the Commission should focus its efforts on developing programs to bridge the digital divide and address the underlying challenges of lack of access in unserved areas, affordability for people who have low incomes, and adoption for people who have access to internet services but do not use them. There is no justifiable basis for undertaking an investigation into "redlining," given the publicly available data, as discussed above, prove otherwise. The resources needed for such an unnecessary undertaking into historical deployment decisions will distract from and likely hinder the efficient and timely use of new funds to deploy broadband services. Further, given the pending legislation in Sacramento and the state and federal funding available for broadband services, the Commission should focus on how to use these new resources to support broadband services.

Question 5. Historically, redlining has meant that some neighborhoods, generally with affluent, white residents, have access to a particular service while poorer residents do not. How should the Commission define redlining? In the context of broadband Internet service, should Internet speeds offered to residents be taken into consideration?

The term "redlining" is a loaded term with a specific history in other industries that typically implies animus and intentional discrimination on the basis of income or race. AT&T objects to such a practice in any industry. The concept of redlining arose in the banking and housing industries, and generally referred to a practice of refusing to lend to residents in certain neighborhoods based on income or race.[56] There is no legitimate analogy to broadband service in California. As demonstrated above, AT&T offers its broadband services on an equitable basis to all consumers. AT&T has also developed low-cost options and participates in federal and state programs to assist and encourage lower income households to adopt its broadband offerings. As to deployments, as described above, AT&T has invested billions of dollars to cover virtually everyone in California with high quality broadband services, including deploying fiber-based services in a manner that serves lower income and minority households at the same rate as other households.

[56] Today, section 805 of the Fair Housing Act prohibits the type of housing discrimination colloquially and historically referred to as "redlining." 42 U.S.C. § 3605(a); *see, e.g., Bank of America Corp. v. City of Miami*, 137 S.Ct. 1296 (2017). But even in the context of banking, a bank does not "redline" if it makes lending decisions on the basis of neutral economic factors, such as the individual applicant's "income or credit history." *See Federal Fair Lending Regulations and Statutes: Fair Housing Act*, Consumer Compliance Handbook (Nov. 27, 2017), https://www.federalreserve.gov/boarddocs/supmanual/cch/fair_lend_fhact.pdf. ("The prohibition against redlining does not mean that a lending institution is expected to approve all housing loan applications or to make all loans on identical terms."); *see also* Dep't of Hous. and Urban Development, "Title VIII Complaint Intake, Investigation, and Conciliation Handbook" at 3-37 – 3-38, https://www.hud.gov/program_offices/administration/hudclips/handbooks/fheo/80241 (describing "redlining" under the Fair Housing Act as a "policy of excluding specific geographic areas from the consideration for investment," as opposed to "assess[ing] the actual risk factors involved in each decision to advance funding").

That is not to say there is not a digital divide in California. There is, and it is our collective challenge to bridge it. AT&T is committed to playing its part to do so. Conflating the causes of the digital divide – which mainly stems from issues related to adoption and affordability in low-income areas, and deployment challenges in rural and other high-cost areas – with the politically-charged notion of redlining will not help to close the digital divide because as shown above, there is no convincing evidence that warrants an investigation. Rather, the debate of redlining unnecessarily distracts from understanding the real causes of the digital divide which require a collaborative approach to resolve. Accordingly, the Commission should reject proposals that equate the existence of a digital divide with terms like "redlining" and focus its efforts instead on working to overcome challenges related to broadband adoption, to address challenges related to affordability for people who have low incomes, and to find efficient methods to facilitate additional deployment where needed in California. The allegations of "redlining" are unproven and counterproductive to addressing the digital divide.

The challenges of providing broadband service for consumers calls for greater collaboration, not protracted and unwarranted investigations. There should be recognition of this critical societal challenge from every level of government, policymakers, community leaders, non-profits and industry, and effective use of this once-in-a-lifetime funding from the state and federal government. We encourage the Commission and the parties to work together collaboratively to address the digital divide, instead of making unproven allegations that lead to protracted disputes and do not address the issues at hand, which are access, affordability, and adoption of broadband services.

Question 6. Does the table in Section 3 of this ruling indicate redlining or some other form of systemic issue? It appears to indicate that poorer communities are more likely to be unserved, and wealthier communities are more likely to be served. Is this analysis accurate? Please explain why it is or is not accurate.

As explained above, the table in Section 3 does not demonstrate redlining. The Commission's underlying data show that the real driver of the differences in deployment is household density, not median household income.

Question 7. Are there other studies or analysis that parties wish to submit for the record in this proceeding?

As noted above, the FCC is in the process of developing the new broadband maps required by the Broadband DATA Act. The maps and the underlying fabric will provide a far more detailed and comprehensive picture of the broadband marketplace than any of the studies cited in the ALJ Ruling. The Commission should rely on the FCC's broadband maps, once they become available, as the Commission develops programs to bridge the digital divide.

Further, the papers cited in the Ruling should not be submitted into the record in this proceeding for the reasons noted above. However, to the extent the Commission does accept those papers into the record, it should also include papers that focus more constructively on the causes of the digital divide.[57]

Question 8. The Commission's Environmental and Social Justice Action Plan has as a stated goal (Goal 3) to increase access to high quality communications services for Environmental Justice and Social Justice communities. If it is found that ISPs have engaged in redlining practices, what actions should this Commission take to ensure high quality Internet service becomes available to previously redlined communities?

As explained above, although the papers cited do not indicate redlining, the Commission should play a role in leading a collaborative process among all stakeholders to address internet

[57] *See* Closing the Digital Divide, The Lewis Latimer Plan, A National Urban League Approach to Digital Equity, https://nul.org/sites/default/files/2021-04/NUL%20LL%20DEIA%20041421%20Latimer%20Plan_vFINAL_1136AM.pdf.

availability in unserved areas, affordability for people who have low incomes, and adoption for people who have access to, but do not use, broadband services.

CONCLUSION

AT&T appreciates the opportunity to comment on the issues raised in the Ruling and looks forward to working with the Commission and all stakeholders to address the issues underlying the digital divide: availability, affordability, and adoption of broadband services. The cited papers do not demonstrate redlining. Thus, the Commission should conclude this aspect of the rulemaking proceeding.

Respectfully submitted,

/s/ Nelsonya Causby

Isabelle Salgado
Nelsonya Causby
AT&T Services, Inc.
430 Bush Street
San Francisco, California 94108
Tel: 415.268.9493
E-mail: lc6239@att.com

Counsel for AT&T Services, Inc.